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August 29, 2005 (Date) Paula S. Sinkhart (Signature)

**PATENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Lydie MEHUEUS
Reinhard Georg LÜHRMANN
Ann UNION
Joseph RAYMACKERS

Serial No.: 10/056,407

Filed: January 24, 2002

For: METHYLATED, SmD HOMOLOGOUS PEPTIDES, REACTIVE WITH THE ANTIBODIES FROM SERA OF LIVING BEINGS AFFECTED WITH SYSTEMIC LUPUS ERYTHEMATOSUS

Confirmation No.: 3304

Group Art Unit: 1645

Examiner: ZEMAN, ROBERT A

Atty. Dkt. No.: 11362.0011.DVUS01

**RESPONSE TO RESTRICTION REQUIREMENT DATED JULY 29, 2005**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This paper is submitted in response to the Restriction Requirement dated July 29, 2005 for which the date for response is August 29, 2005.

Enclosed herewith is a Change of Correspondence Address Application updating the correspondence address and a Supplemental Information Disclosure Statement.

It is believed that no fee is due; however, should any additional fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to the enclosed materials, the Commissioner is authorized to deduct said fees from Deposit Account No. 01-2508/**11362.0011.DVUS01**.

The Restriction Requirement alleges that the claims comprise 16 distinct inventions, Groups I–XVI. The Requirement further alleges that:

> [i]n addition, Groups I and II...read on patentably distinct SEQ ID numbers. Each sequence is patentably distinct because the sequences are structurally unrelated sequences and a further restriction is applied to each Group. Applicant must further elect a single SEQ ID NO. (See MPEP 803.04) if either Group I or Group II is elected.
>
> Applicant is advised that examination will be restricted to only the elected SEQ ID NO. and should not to be [sic] construed as a species election.
>
> The inventions are distinct, each from the other because of the following reasons:
>
> Inventions I–II and VII–XVI are each separate and distinct from each other, as they comprise differing biochemical and immunological entities having differing properties and uses. In the instant case Inventions I–II are drawn to differing classes of peptides... .

Applicant respectfully traverses.

The restriction requirement is based on an allegation that the claims read on "structurally unrelated" sequences. Applicant believes this assessment is in error. As was noted during the prosecution of the parent application, the claimed sequences are structurally related in that they each comprise XG dimers; where "G" is glycine and "X" stands for an $N^G$-mono- or $N^G$-$N^G$-dimethylated arginine, asymmetrical dimethyl arginine, or $N^G$-$N'^G$-dimethylated arginine, symmetrical dimethyl arginine. Thus, all of the sequences falling within Group I share a common structural element and are not "structurally unrelated".

Moreover, this structural feature is common among the claims of Group I and Group II. Furthermore, even if Group I and Group II claims were deemed to be independent or distinct inventions, a search of both groups could "be made without serious burden" (*see* MPEP §803).

Therefore, Applicant respectfully requests examination of both the Group I claims and the Group II claims in the instant application.

With respect to a selection of either Group I or Group II claims, the instant Action recites that "Applicant is advised that examination will be restricted to only the elected SEQ ID NO. and should not be construed as a species election." If this statement is intended to convey that only a single SEQ ID NO will be examined in the instant application, Applicant believes that this statement is improper.

Current claim 1 is a linking claim. Specifically, claim 1 is a generic claim that links multiple species claims (including all of the SEQ ID NOs listed in claim 35). The U.S. Code of Regulations recites, in part:

> In the first action on an application containing a generic claim to a generic invention (genus) and claims to more than one patentably distinct species embraced thereby, the examiner may require the applicant in the reply to the action to elect a species of his or her invention to which his or her claim will be restricted if no claim to the genus is found to be allowable

(37 C.F.R. §1. 146, emphasis added). Since claim 1 of the currently pending claims is a generic claim, it falls within the purview of 37 C.F.R. §1.146. This Rule makes no provision for the type of limitation to a single species of a generic claim that is provided in the current Action. Moreover, MPEP section 809.03 recites that "where linking claims exist[—genus claims linking species claims are listed as a type of linking claim—]...Examiners should use Form Paragraph 8.12 to make restrictions involving linking claims."

Form Paragraph 8.12 recites, in part, that: "[u]pon allowance of the linking claim(s), the restriction requirement as to the linked inventions **shall** be withdrawn and any claims(s) depending from or including all the limitations of the allowable linking claim(s) will be entitled to examination in the instant application". (MPEP § 809.03, emphasis in the original). Thus, if claim 1 of the instant application is found to be allowable, Applicant will be entitled to have all

claims depending therefrom examined in the instant application. Accordingly, characterization of an elected SEQ ID NO as anything other than an elected species is improper in the instant application.

Therefore, Applicant's election of SEQ ID NO:1 (*see* below) is provisional. That is, in accordance with MPEP § 809.03 and 37 C.F.R. §1. 146, once claim 1 (or any other generic linking claim) is found allowable, Applicant anticipates that all pending species claims will be examined.

In response to the restriction requirement, Applicant elects, with traverse, to prosecute claims 1, 23–26, 35, and 36 as they relate to Group I. Furthermore, Applicant provisionally elects SEQ ID NO:1 for initial examination.

The Examiner is invited to contact the undersigned attorney at 713.787.1589 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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